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2005 MAY 13 PM 3:48

T.R.A. DOCKET ROOM  
May 13, 2005

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VIA HAND DELIVERY

Hon Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re *Joint Request of KMC Telecom III LLC and CenturyTel Acquisition LLC for  
Approval to Transfer Authority to Provide Telecommunication Services  
and to Sell Assets*  
Docket No 05-00092

Dear Chairman Miller:

On May 5, 2005, BellSouth filed a *Petition to Intervene* in this proceeding. Yesterday, on May 12, KMC filed an *Opposition to BellSouth's Petition to Intervene* ("Opposition"). KMC requests that the Authority deny BellSouth's *Petition to Intervene* and approve the *Joint Request for Approval to Transfer Authority to Provide Telecommunications Services and to Sell Assets of KMC Telecom III LLC and CenturyTel Acquisition, LLC*

In its *Opposition*, KMC claims that "[c]ontrary to the statements made by BellSouth in the carrier's request to intervene, there is nothing in the joint petition requesting the Authority's approval of any assignment, in whole or in part, of the BellSouth-KMC interconnection agreement." While it may be true that there is nothing in the ***Joint Petition*** itself filed with the Authority requesting such approval, BellSouth was informed by KMC representatives that the KMC interconnection agreement with BellSouth was being assigned to CenturyTel pursuant to the Asset Purchase Agreement referenced in the second paragraph of the *Joint Petition*. Further, upon review of the Asset Purchase Agreement between KMC III and CenturyTel, which was not filed with the Authority, it was clear that the term "Assets," which describes what will be transferred from KMC III to CenturyTel, is broadly defined.<sup>1</sup>

<sup>1</sup> "Assets" shall mean all of the Sellers' rights in all assets listed on **Schedule 1(a) and all other assets** or properties, whether tangible or intangible, real, personal or mixed and wherever located, primarily **used in the operation of the Business** as the same may

KMC III's *Opposition* also states that "BellSouth has apparently overlooked the fact that the joint petitioners expressly asked that the TRA transfer KMC's intrastate operating authority to CenturyTel. ." BellSouth did not overlook any such fact. The point is that BellSouth does not have an interconnection agreement with CenturyTel. CenturyTel is evidently going to purchase KMC assets, which at the minimum includes customers of KMC located in Tennessee, to whom telephone services are presently being provided. CenturyTel does not have an interconnection agreement with BellSouth that will allow those customers to interconnect with BellSouth's network. Even if there are only a 100 customers as KMC represents, it is unlikely that they would care to restrict their calling to each other.

Given the terms of the Asset Purchase Agreement itself and the statements made by KMC representatives during discussions with BellSouth, it was perfectly reasonable for BellSouth to understand that the *Joint Request for Approval to Transfer Authority to Provide Telecommunications Services and to Sell Assets* **included** the transfer of the KMC/BellSouth interconnection agreement.

Finally, KMC and BellSouth presently have disputes about money owed to BellSouth by KMC for services rendered under the existing interconnection agreement. BellSouth has a legitimate concern regarding the transfer of assets, and the responsibility for the maintenance of records that are necessary to resolve and ultimately pay these bills that are in dispute. At present, to BellSouth's knowledge, neither CenturyTel nor KMC have made any provision for these matters, which are clearly of concern to BellSouth and about which it is entitled to be heard in order to obtain some assurances that this asset transfer will not impair its ability to resolve these claims.

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exist on the Closing Date, including, without limitation, the Telephone Plant, Accounts Receivable, **Assigned Contracts**, Books and Records, Inventory, Authorizations (to the extent their transfer is permitted by Applicable Law), Intellectual Property, and Real Property Interests and all rights, claims or causes of action of Sellers against third parties relating to the Business, or the Assets, including rights under insurance policies for events or circumstances occurring between the date of this Agreement and Closing and manufacturer's and vendor's warranties, provided, however, that, notwithstanding anything herein to the contrary, the term "Assets" shall not include (an Purchaser is not purchasing and acquiring hereunder) any of the Excluded Assets (emphasis added)

See p. 2 of the Asset Purchase Agreement

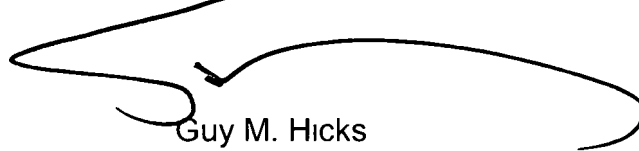
While BellSouth has not been able to obtain access to Schedule 1(a), it is reasonable to assume that the interconnection agreement falls within this broad definition of assets.

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BellSouth would note that there are ongoing discussions between representatives of KMC and BellSouth in Atlanta that could result in a resolution of these issues. BellSouth requests that its *Petition to Intervene* be granted and that the parties be given additional time to attempt to resolve these issues by agreement.

Copies of the enclosed are being provided to counsel of record

Very truly yours,

A handwritten signature in black ink, appearing to read "Guy M. Hicks". The signature is stylized with a large, sweeping loop that extends to the right and then curves back down to the left, ending under the name.

Guy M. Hicks

GMH ch

## CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2005, a copy of the foregoing document was served on the following, via the method indicated

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